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9  
10 IN THE UNITED STATES BANKRUPTCY COURT  
11 FOR THE DISTRICT OF OREGON

12 Diane Harris, ) Case No. 10-41145-tmb7  
13 )  
14 )  
15 ) Debtor.  
16 )  
17 MICHAEL F. HERRICK, ) Adv. Proc. No. 11-03104-tmb  
18 )  
19 ) Plaintiff, )  
20 v. )  
21 )  
22 DIANE HARRIS, )  
23 )  
24 ) Defendant.  
25 )  
26 )

**COMPLAINT OBJECTING TO  
DISCHARGE AND  
DISCHARGEABILITY**

(11 USC §§ 727(a)(2) and (4) and  
11 USC § 523(a)(4))

20 Plaintiff Michael F. Herrick alleges as follows:

21 1.

22 This is a core proceeding objecting to the discharge of the debtor and the dischargeability  
23 of the debt the debtor owes to plaintiff. This court has jurisdiction pursuant to 28 USC §§  
24 157(b)(2)(I) and (J) and 1334. Venue is proper pursuant to 28 USC § 1409.

25 2.

26 Plaintiff is a creditor of Defendant in the above-referenced bankruptcy case.

1 3.

2 Defendant filed the above-referenced bankruptcy case on November 26, 2010 (hereinafter  
3 the “Bankruptcy Case”).

4 FOR HIS FIRST CLAIM FOR RELIEF  
5 (11 USC § 727(a)(2))  
6 (Transfer/Concealment to Hinder/Delay/Defraud Creditors)

7 4.

8 Plaintiff realleges paragraphs 1 through 3 above.

9 5.

10 Within one year before Defendant filed the Bankruptcy Case, Defendant transferred the  
following property:

- 11 a. One day before the Defendant signed her bankruptcy petition, she signed a deed to  
12 a bare lot in Yakima County, Washington (“Toppenish Property”) transferring  
13 such property to her sister, Denise E. Lawrence. On November 30, 2010,  
14 Defendant signed the declaration concerning her bankruptcy schedules under  
penalty of perjury indicating that she still owned the Toppenish Property and that  
it had a value of \$10,000.
- 15 b. Defendant’s Thunderbird to Marlene Gorton. However, Ms. Gorton is disabled  
and unable to drive.

16 6.

17 On December 20, 2010, twenty-four days after filing the Bankruptcy Case, Defendant  
18 recorded the deed in Yakima County, finalizing the transfer of the Toppenish Property to her  
19 sister post-petition without the knowledge or consent of the bankruptcy trustee.

20 7.

21 At the time Defendant made such transfers, Defendant was aware that she owed money to  
22 creditors, including the debt owed to Plaintiff. Defendant made such transfers with intent to  
23 hinder, delay and/or defraud her creditors from being able to collect the sums Defendant owed to  
24 them. As a result, Defendant should be denied a discharge in this Bankruptcy Case pursuant to  
25 11 USC § 727(a)(2).

1 FOR HIS SECOND CLAIM FOR RELIEF  
2 (11 USC § 727(a)(4))  
3 (Knowing and Fraudulent False Oath or Account)

4 8.  
5

6 Plaintiff realleges paragraphs 1 through 3, and 5 above.  
7

8 9.  
9

10 Defendant, in connection with the Bankruptcy Case, declared under penalty of perjury  
11 that the schedules she filed in the Bankruptcy Case were true and correct under penalty of  
12 perjury. In fact, such schedules were materially false in the following respects:  
13

- 14 a. Defendant had a Scottrade Account with an approximate balance of \$22,300 at the  
15 time she filed the Bankruptcy Case. Defendant failed to list that asset in Schedule  
16 B of her bankruptcy petition.  
17 b. Defendant stated in schedule A of her bankruptcy petition that she still owned the  
18 Toppinish Property. In fact, she had transferred such property to her sister  
19 purportedly for \$7,000 the day before Defendant signed her bankruptcy petition.  
20 c. On information and belief, Plaintiff alleges that Defendant omitted rental income  
21 in schedule I of her bankruptcy petition.  
22 d. Defendant lumped her residence at 17179 Milky Way Rd, Bend, Oregon  
23 (“Residence”) with a separate bare lot with its own separate legal description and  
24 tax account located at 17173 Milky Way Rd, Bend, Oregon (“Bare Lot”) on  
25 Schedules A and D, indicating that both properties were encumbered by Indymac  
Mortgage Svcs, when in fact Indymac Mortgage Svcs only has a lien on the  
Residence and not the Bare Lot.  
26 e. Defendant listed Plaintiff’s claim on Schedule F of her petition as an unsecured  
claim when in fact Defendant knew Plaintiff had a judgment against Defendant  
that was a lien against both the Residence and the Bare Lot.  
f. Defendant significantly overstated the amount she owes Indymac Mortgage Svcs  
to give the false impression she has no equity in the Residence.

27 10.  
28

29 Defendant, in connection with the Bankruptcy Case, declared under penalty of perjury  
30 that the statement of financial affairs she filed in the Bankruptcy Case were true and correct  
31 under penalty of perjury. In fact, such statement of financial affairs were materially false in the  
32 following respects:  
33

- 1 a. Defendant willfully failed to disclose the transfer of the Toppenish Property to her  
sister.
- 2 b. Defendant willfully failed to list any income from the sale of the Thunderbird or  
the sale of the Toppenish Property in response to Question 2 in the Statement of  
Financial Affairs.
- 3 c. Defendant willfully failed to disclose income she derived through  
misappropriation of funds from the Estate of Michael G. Herrick, Deschutes  
County Circuit Court Case No. 08-PB-0029-AB (“Probate Case”) in response to  
Question 2 in the Statement of Financial Affairs.
- 4 d. Defendant deliberately failed to disclose income from her business known as  
Lincincome Madras Development, LLC in response to Question 2 in the Statement  
of Financial Affairs.
- 5 e. Defendant falsely stated in response to Question 18 of the Statement of Financial  
Affairs that she was not an officer, director, partner or managing executive of a  
corporation, or partner in a partnership within six years before she filed the  
Bankruptcy Case nor that she owned 5 percent or more of the voting or equity  
securities of any business within six years before she filed the Bankruptcy Case.  
In fact, Defendant had a management/ownership interest in Lincincome Madras  
Development, LLC up until June of 2010.
- 6 f. Defendant falsely stated in response to Question 19(d) of the Statement of  
Financial Affairs that she had not issued a financial statement to any of her  
creditors. In fact, Defendant issued a financial statement to Plaintiff in April of  
2010.

16 11.

17 Defendant, in connection with the Bankruptcy Case, declared under penalty of perjury  
18 that the Chapter 7 Statement of Current Monthly Income and Means-Test Calculation (“Means  
19 Test”) she filed in the Bankruptcy Case was true and correct under penalty of perjury. In fact,  
20 such Means Test was materially false in that Defendant indicated falsely that her debts were not  
21 primarily consumer debts. Defendant made such statement willfully and intentionally because  
22 she knew that an irrefutable presumption of abuse would have arisen under the Means Test had  
23 she filled it out.

24 12.

25 Defendant, in connection with the Bankruptcy Case, testified untruthfully under penalty  
26 of perjury at the meeting of creditors held on January 5, 2011 that Defendant transferred the

1 Toppenish Property to her sister in October of 2010.

2 13.

3 Defendant made the foregoing oaths knowing such oaths were false in an effort to defraud  
4 the creditors of the estate, the trustee administering the Bankruptcy Case, and the Bankruptcy  
5 Court. As a result, Defendant should be denied a discharge in the Bankruptcy Case pursuant to  
6 11 USC § 727(a)(4)(A).

7 FOR HIS FOURTH CLAIM FOR RELIEF

8 (11 USC § 523(a)(4)  
(Exception to Discharge)

9 14.

10 Plaintiff realleges paragraphs 1 through 3, and 5 above.

11 15.

12 Defendant occupied a position of trust with respect to Michael G. Herrick to the extent  
13 that he appointed her as the executor of his estate in his last will and testament. As a result,  
14 Defendant was appointed as executor in the Probate Case. As such, Defendant acted as a  
15 fiduciary with respect to the estate of Michael G. Herrick (the “Probate Estate”) and the  
16 beneficiaries of his estate.

17 16.

18 Contrary to her fiduciary duties, Defendant intentionally and fraudulently engaged in a  
19 pattern of self-dealing and reckless investments to the detriment of the Probate Estate and  
20 attempted to conceal such conduct from the Court administering the Probate Case and the  
21 beneficiaries of the Probate Estate. Such self-dealing included accepting rent on behalf of the  
22 estate, but not accounting for all of such rent, investing large sums of the estate’s assets in very  
23 risky companies without professional advice.

24 17.

25 Defendant’s self-dealing and reckless investing constituted unauthorized appropriation of  
26 the Probate Estate’s property.

1 18.

2 The Court administering the Probate Case entered a judgment against Defendant on June  
 3 7, 2010 in favor of the Probate Estate in the amount of \$209,003.00, plus attorney's fees in the  
 4 amount of \$42,174.63, plus costs in the amount of \$2,619.99 with interest thereon at the rate of  
 5 9% per annum from the entry of judgment until paid. Such judgment was assigned by the  
 6 Successor Personal Representative of the Probate Estate to Plaintiff, Jeffrey A. Herrick, Shriners  
 7 Childrens Hospital, and Deschutes County Salvation Army. Deschutes County Salvation Army  
 8 subsequently assigned its portion of the judgment equally to Plaintiff and Jeffrey A. Herrick. As  
 9 a result, Plaintiff owns 45.375% of the judgment, Jeffrey A. Herrick owns 45.375% of the  
 10 judgment, and Shriners Childrens Hospital owns 5.25% of the judgment.

11 19.

12 As a result of Defendant's conduct, the judgment entered in the Probate Case should be  
 13 excepted from the Debtor's discharge under 11 USC § 523(a)(4).

14 WHEREFORE, plaintiff prays for judgment as follows:

15 1. For a judgment denying Defendant a discharge in the Bankruptcy Case.

16 2. Alternatively, for a judgment excepting the judgment entered in the Probate Case  
 17 against Defendant on June 7, 2010 excepted from the Defendant's discharge.

18 3. For a judgment in favor of Plaintiff for Plaintiff's costs and disbursements  
 19 incurred herein.

20 4. For such further relief in Plaintiff's favor as this court deems just and equitable.

21 DATED this 21st day of February, 2011.

22  
 23 /s/ Jonathan G. Basham  
 24 Jonathan G. Basham, OSB #90038  
 25 Attorney for Plaintiff  
 26